

September 24, 1996

VIA UPS OVERNIGHT

Bruce Blake  
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La Habra Heights, CA 90631

Steve H. Burrus, Secretary-Treasurer  
Teamsters Local Union 995  
300 Shadow Lane  
Las Vegas, NV 89106

Michael J. Riley, President  
Teamsters Joint Council 42  
1616 W. 9th Street, Room 500  
Los Angeles, CA 90015

Mike Magnani, President  
Teamsters Local Union 995  
300 Shadow Lane  
Las Vegas, NV 89106

Re: Election Office Case No. P-969-JC42-CLA

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* by Bruce Blake, a member of Local Union 848. Mr. Blake alleges that Joint Council 42's publication, *Southern California Teamster ("Teamster")*, was used to attack the candidacy of Ron Carey, candidate for re-election as general president, in violation of the *Rules*.

Regional Coordinator Dolly M. Gee investigated the protest.

Mr. Blake contends that impermissible commentary appears in a column entitled, "Local 995 *Professional and Clerical Employees*." In this column, the comments of six of the seven members of Local Union 995's delegation to the Convention are printed. In the first comment, Steve Burrus, delegate and secretary-treasurer of Local Union 995, criticizes Mr. Carey for failing to address issues of concern to members as Convention chair. Mike Magnani, delegate and president of Local Union 995, then states that Mr. Carey ruled members out of order for attempting to discuss business important to union members and that Mr. Carey

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misused his position as Convention chair so that delegates could only address “business supported by the Chair.”

Alternate delegate Barbara Beardsley’s comments follow those of Mr. Magnani. Ms. Beardsley expresses “disappointment” for the manner in which Mr. Carey conducted the Convention. Delegate Elmer Hoskins then states, “It was a very bad convention. It was a hard convention. Very little got done.”

Following Mr. Hoskins’ statement, alternate delegate Judy Herman expresses her thanks to the rank and file for allowing her the opportunity to attend the Convention. She also states:

The Chairman took it upon himself to clear the galleries of guests and retirees. Some of these individuals paid their own way to the Convention and had been dues paying members for years. Our Delegates had to call for a division of the House repeatedly so their voices could be heard. Of course, when we did get a division, our Delegates won.

The last comments printed in the column were those of alternate delegate Glenn Roark. He stated that “Ron Carey used filibustering, quick gavels, and a deaf ear to steal the convention from the delegates on the floor.”

Article VIII, Section 8(a) of the *Rules* states that a union-financed publication or communication may not be “used to support or attack any candidate or the candidacy of any person.” In reviewing union-financed communications for improper campaign content, the Election Officer looks to the tone, content and timing of the publication. Martin, P-010-IBT-PNJ et al. (August 17, 1995) (decision on remand), aff’d, 95 - Elec. App. - 18 (KC) (October 2, 1995). The Election Officer also considers the context in which the communication appeared.

In Martin, the Election Officer recognized that union officers and officials have a “right and responsibility to exercise the powers of their office and to advise and report to the membership on issues of general concern” (quoting Camarata v. International Bhd. of Teamsters, 478 F. Supp. 321, 330 (D.D.C. 1979), aff’d, 108 L.R.R.M. (BNA) 2924 (D.C. Cir. 1981)). The Election Officer also recognized in Martin that:

. . . an otherwise acceptable communication may be considered campaigning if it goes on to make a connection with the election or election process, if it involves excessive direct or indirect personal attacks on candidates, or, alternatively, involves lavish praise of candidates. Otherwise legitimate coverage of the activities of a union official running for office may constitute campaigning if it is excessive.

Because of the close proximity of the International officer election, the standard of scrutiny has greatly increased.

The Election Officer acknowledges that many aspects of the Convention were politically charged. Many attendees openly displayed their political affiliation. Energetic demonstrations of support for candidates were common, as were heated political debates. A portion of the proceedings was devoted solely to the nominations of International officer candidates.

The International Convention is an event of significant interest to many IBT members. Informing members of the events of the Convention through union publications is a legitimate duty of local union, joint council or conference officers. Reporting on the proceedings at the Convention would be almost impossible without some reference to the nomination process, which was an integral part of the Convention, and without reference to one or more of the candidates. Moreover, Mr. Carey, as general president of the IBT, served as the chair of the Convention. This role focused a great deal of attention and interest on his actions. Generally, detailed coverage of Mr. Carey as Convention chair would not automatically violate the *Rules*.

In addition, a union-financed publication is not obligated to present all points of view concerning the conduct or outcome of the Convention. Similarly, a union-financed publication is not required to report on everything that occurred on the Convention floor. Such requirements would effectively prohibit Convention coverage by union-financed publications by obligating journalists for such publications to report on every event, act or proceeding that occurred at the Convention. Such a requirement would not only create a near impossible task for such reporters, but would also intrude on their journalistic discretion. The Election Appeals Master has stated that “[A]bsent a political endorsement or attack, as established by the communication’s tone, content, and timing, the Election Rules do not empower me to intrude upon the journalistic process of a union

publication.” In Re: Lamy, 95 - Elec. App. - 53 (KC) (January 11, 1996). Moreover, the Election Officer has previously determined that “a union-financed communication does not violate the *Rules* because it fails to treat opposing ideas or opinions.” Volpe et al., P-828-IBT-MGN et seq. (July 11, 1996), aff’d, 96 - Elec. App. - 218 (July 23, 1996).

Finally, union-financed publications may contain opinions of the manner in which the Convention was organized or managed, or the conduct of attendees, so long as such editorializing does not make a connection with the campaign or the International officer election. “Just as it is proper for incumbent Union officers to expend Union resources for the conduct of legitimate Union business, it is permissible for a Union member to criticize the manner in which the incumbent conducts such business.” Jacob, P-060-LU745-EOH (July 21, 1995), remanded on other grounds, 95 - Elec. App. - 6 (KC) (August 14, 1995). Thus, the Election Officer stated in Martin, supra, “[R]estrictions on campaigning must not be read so broadly as to restrict the right and the responsibility of union officers to conduct their official business, nor prohibit other members and subordinate bodies from criticizing the policies or official conduct of those officers.” See also Jacob, P-071-LU391-EOH (September 7, 1995), aff’d, 95 - Elec. App. - 19 (KC) (October 3, 1995). Union officers, who control the content of union-financed communications, may criticize or support the policies or actions of the current IBT administration in those communications without violating the *Rules*, so long as their comments do not support or attack the candidacy of any slate or individual. See Fischer et al., P-090-IBT-PNJ/PGH et seq. (September 7, 1995), aff’d, 95 - Elec. App. - 15 (KC) (September 7, 1995).

The actions of the general president at the Convention are not only newsworthy, they invite comment. So long as such commentary does not establish a link to the election or campaign, and is limited to the performance of Mr. Carey’s office as general president or Convention chair, it does not violate the *Rules*.

In Chalfant, P-882-JC28-PNW, P-883-JC28-PNW (September 6, 1996), the Election Officer determined that the publication of delegate and alternate delegate accounts of Convention proceedings in a joint council newspaper was permissible even though the majority of the delegates and alternate delegates quoted were critical of Mr. Carey’s performance as Convention chair. The Election Officer rejected the contention of the protester that the publication of their comments constituted campaigning for Hoffa since most of the delegates and alternates in local unions affiliated with the joint council were supporters of Mr. Hoffa.

In the instant protest, Local Union 995 was given space in the joint council’s publication to report on matters of interest to members of the local union. In the protested issue, the leadership of the local union chose to use this space to print delegate reports. While these reports were almost uniformly critical of Mr. Carey, the criticisms are of Mr. Carey’s execution of his duties as Convention chair. The comments neither attack nor support the candidacy of any individual and, given that they are delegate reports, are not excessive in their

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criticism of Mr. Carey's performance as Convention chair. Thus, the publication of these comments in the protested publication did not violate the *Rules*.

Accordingly, the protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing and shall be served on:

Kenneth Conboy, Esq.  
Latham & Watkins  
885 Third Avenue, Suite 1000  
New York, NY 10022  
Fax (212) 751-4864

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Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 N. Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel  
Election Officer

cc: Kenneth Conboy, Election Appeals Master  
Dolly M. Gee, Regional Coordinator